

Order

Michigan Supreme Court
Lansing, Michigan

March 18, 2009

Marilyn Kelly,
Chief Justice

137419 & (83)

Michael F. Cavanagh
Elizabeth A. Weaver
Maura D. Corrigan
Robert P. Young, Jr.
Stephen J. Markman
Diane M. Hathaway,
Justices

PEOPLE OF THE STATE OF MICHIGAN,
Plaintiff-Appellant,

v

SC: 137419
COA: 271366
Presque Isle CC: 05-092269-FC

GARY EDWARD DAVENPORT,
Defendant-Appellee.

On order of the Court, the application for leave to appeal the August 28, 2008 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should now be reviewed by this Court. A presumption of prejudice exists when a defendant's former defense counsel joins the prosecutor's office that is pursuing the case against the defendant. MRPC 1.9(b), 1.10(b). Such a presumption may be overcome, however, if the prosecutor shows that the attorney who has a conflict of interest was properly screened out from "any participation in the matter." MRPC 1.10(b)(1). *State v McClellan*, 179 P3d 825 (Utah App, 2008), on which the Court of Appeals therefore unnecessarily relied, is fully consistent with these principles. The motion to stay is DENIED.



0311

I, Corbin R. Davis, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

March 18, 2009

Corbin R. Davis

Clerk